

**ZONING BOARD OF ADJUSTMENT
DECEMBER 2, 2003
(Approved as amended 1/6/04)**

PRESENT: Forrest Esenwine, Chairman; Leon Methot; June Purington; Alternate Tim Galvin;
Naomi Bolton, Land Use Coordinator

GUESTS: Everett Stone, Code Enforcement Officer; Robert C. Palmer; Richard Monahan; Wayne Daniels; Ella Daniels; Steve Daniels; Tony Marts; Ginger Esenwine; Keith Erf; Deb Tessier; Jan Proctor; Pam Sargent; Melinda Gehris; Richard Head; Roy Tilsley; Barbara Purington; Cindi Paulding; Holly Hill Farm Trust, James Coughlin, Trustee; Robert Murphy; Michael Brassard; Susan Brassard; Charles L. Houghton, Jr.; Don Dawson; Daryn Turner; Neal Kurk; Nathan St. Clair; Heidi Nippe; Ron Nippe.

I. CALL TO ORDER:

Chairman Forrest Esenwine called this meeting to order at 7:30 PM at the Weare Town Office Building. Chairman Esenwine explained the process by which the board conducts business. Chairman Esenwine appointed Tim Galvin to sit as a voting member for tonight's cases.

II. PUBLIC HEARINGS:

Case #3903 Brook Shire, LLC (Continued Hearing)

Special Exception, Article 27, Section 27.3.10

Applicant is requesting permission to allow individual wells and septic systems in a cluster development.

Tax Map 412-197 & 147

South Stark Highway

The Board received a letter from Bob Baskerville, Bedford Design Consultants, indicating that since the last meeting a site walk was held with the Conservation Commission. As a result of the site walk with the Conservation Commission there were some changes made to the plans, which has to be sent to the State, therefore as of tonight he still does not have State Subdivision Approval. Mr. Baskerville requested that the hearing be continued to the January meeting. June Purington moved to continue this hearing for one month, Leon Methot seconded the motion. Chairman Esenwine stated that he would like to amend the motion to read, to continue this hearing to January but no further continuances be granted, Leon Methot seconded the amended motion. Unanimous vote in favor (Methot, Purington, Esenwine, Galvin).

Tim Galvin excused himself from the board for the next hearing for external matters.

Case #4003 Neal Kurk

Administrative Appeal, Article 30-A, Section 3.1

Applicant alleges that an error was made on 10/16/03 by the Building Inspector to issuing a building permit to allow alterations to a house in the Mt. Dearborn Road Historic District Overlay.

Tax Map 408-052

25 Mt. Dearborn Road

Leon Methot moved to accept the application as complete, Chairman Esenwine seconded the motion, unanimous vote in favor (Methot, Purington, Esenwine). Mr. Kurk stated that a building permit was granted to Chris Bolton to rehabilitate a house at 25 Mt. Dearborn Road. Mr. Kurk had some concerns about that so he filed an appeal for the granting of the permit. The work has already been done and so that may present a problem. But the purpose of the appeal was really to get some clarification from the board on what the historic overlay district under Article 30-A really says on this matter. Mr. Kurk stated that to make it clear, he has consulted with Chris Bolton and he has no fault with the process he went through. Mr. Bolton asked Everett Stone, the Code Enforcement Officer and various other people, "what do I need to do," and he was advised and he did that, on two of the three items. Mr. Kurk stated that his real issue for bringing the appeal is whether Mr. Stone's interpretation of the ordinance is correct. There is a third issue here dealing with a stonewall. The stonewall separates 25 Mt. Dearborn from Mt. Dearborn Road. Under the Town ordinance that we adopted last year, Article 53, one cannot remove that kind of a dividing wall, Town boundary, without first going to the Board of Selectmen and Planning Board and getting their approval. That was not done and Mr. Kurk added that Chris told him he was unaware he had to do that and now is in the process of trying to rectify that situation by asking for an exception. So that issue is not before the board tonight. Mr. Kurk further clarified the questions that he raised and is appealing. Number one, is whether the addition that was put on the building violates the zoning setback requirements and thus requires a special exception before the building permit could properly be issued. It turns out that after further research was done, that while the building was totally rehabilitated and the appearance changed in the front because some "L's" were removed because they were rotten, and a new structure replacing it, there is no change in the size of the footprint. So this building is no closer to the road or further from the road then it was before. It is no larger or smaller in size then it was before. So he would like to withdraw any question about that. That was a factual error on Mr. Kurk's part and he would like to withdraw that. With respect to the removal of the stonewall bordering a Town road violating Article 53 of the Town meeting, that's being resolved and he is not putting that before this board. Mr. Kurk continued, what does remain is this, whether the rehabilitation of a structure in the historic overlay district violates the Article, because it requires a special exception before the building permit could properly be issued, that is the question. Mr. Kurk stated that Everett Stone issued the building permit because in his opinion this was not a development, it is only a development that requires a special exception. Under Article 30-A.3.1, page 36, "no development shall occur within the historic district overlay area except by special exception". If you turn to page 4 where development is defined, "it shall mean any manmade change to improved or unimproved real estate." Mr. Kurk stated that he doesn't know what the interpretation of this language for other articles of the ordinance, but in terms of the historic overlay district he thought it should be interpreted to mean if there is an existing structure in the district is going to have it's exterior changed, for example replacing 18th century windows with 20th century bay windows, that that certainly violates the spirit of the ordinance and would require a special exception. The purpose of Article 30-A is to preserve

the scenic, historic and open space character of the designated zone. Mr. Kurk stated that what he is asking for from the board is a determination that as far as development is concerned and applied to this article 30-A, it would apply to existing structures looking to alter the appearance of the building, would require a special exception to make sure that the alteration is carried out in the style of either a pre 1840 dwelling or if were later than 1840, in the style in the period for which it was built. Mr. Kurk stated that he is not in any way commenting on whether the changes that Chris made to his building were stylistically appropriate. The only issue is whether before he made those exterior changes he needed a special exception from the zoning board and then a building permit from Mr. Stone. As Mr. Kurk sees the ordinance that is the way it should be interpreted.

Everett Stone, Code Enforcement Officer stated that he did some measurements on the house and Mr. Kurk is correct is the footprint is the same and possibly a little smaller. The house was built in 1938. Mr. Stone stated that as far as the windows and siding goes, he was not told what type of windows, just the size of the windows. Mr. Stone further added that he was in the building in June with the assessor and the building was in bad shape and the trees were leaning towards it. They are fixing it up. As far as development, Mr. Stone stated that he felt that it was his determination that development is something that is new and not fixing up a house that needs fixing.

Chairman Esenwine stated that he felt that the definition of development is ambiguous and felt it had to do with the land and not the structures on the property.

Approving Abutters: NONE
Disapproving Abutters: NONE
Public At Large: NONE

Deb Tessier, 11 Mt. Dearborn Road, is an abutter and just has a few questions. Her husband had written a letter to Mr. Stone with concerns with the water that might flow onto their property. They did get a letter back from Mr. Stone, indicating that when they re-grade the property they will redirect the water and work with you. A new septic plan is in the review stage. Mrs. Tessier also asked, if the house was going to be seasonal or residential. What has been done to correct the water problem? Has a new septic been put in? Where is it located? What type? If not, would a new one be put in. The board told Mrs. Tessier that she has some very valid questions that would be better directed directly to Chris Bolton.

Jan Proctor, 16 Mt. Dearborn Road, is an abutter, diagonally across from the property. Her problem is with the stone wall only and will wait for the Selectmen and Planning Board to address that issue.

Other Boards: NONE
Rebuttal of Applicant: Mr. Kurk stated that he appreciates the board for listening to the concerns.

Being there were no further comments or questions, Chairman Esenwine closed this hearing at 8:02 PM.

Tim Galvin retained his seat on the board for the remainder of the meeting.

Case #4103 Rosedale Contracting, Inc.
Special Exception, Article 28, Section 28.7.1

Applicant is requesting permission to permit construction of a driveway and associated grading within an area that has been defined as a wetland.

Chairman Esenwine stated that we have a problem with this application. Mr. Palmer was present and stated that he is aware that his license has expired. He has formed a new corporation which has a State licensed surveyor on his staff and he is in the process of getting his license reinstated, however the plan was approved and his surveyor is in the process of reviewing this and putting his stamp on the new plans. Mr. Palmer asked for a continuance to allow the time for new plans to be submitted. Chairman Esenwine stated that our rules require plans stamped by a licensed surveyor. Chairman Esenwine added that we can't continue a faulty application. Tim Galvin moved to dismiss the application, June Purington seconded the motion, unanimous vote in favor (Methot, Purington, Esenwine, Galvin). Chairman Esenwine closed this hearing at 8:08 PM.

Case #2903 David Eric Welch (Rehearing)
Special Exception, Article 24, Section 24.8
Applicant is seeking permission to allow off street parking within the front and side setbacks.
Tax Map 109-017 299 South Stark Highway

Roy Tilsley, attorney for David Welch was present. Mr. Tilsley stated that in the interest of disclosure they have the same situation here that was just addressed with Mr. Palmer. This is a plan that has been stamped by Mr. Palmer at a time where he didn't realize that his license had expired. Chairman Esenwine responded, that is true except that we are here for a rehearing based on safety issues.

Mr. Tilsley stated that the board denied this special exception request for on site parking in the side and front setbacks under section 3 under the special exception conditions, which deal with pedestrians and vehicle safety. In an attempt to address that Mr. Tilsley has provided the board a copy of the renewal of the State of NH driveway permit which Mr. Welch obtained at the end of October. As you can see from that the State has looked at Mr. Welch's request to update or amend the driveway permit for the purpose of constructing additional parking areas for sales, display and customer parking and for paving. The sales, display and customer parking is the plan that you have before you. The State has indicated that the driveway permit will be renewed for an additional year and they are aware of Mr. Welch's proposal. Mr. Tilsley continued, as I recall from the last meeting, this is a piece of evidence that the board had asked for, wanting to know what the State's position was. The State has seen the plan and has confirmed that it is acceptable to the State to have the driveway permit and to have the parking where they are proposing to locate it. Mr. Tilsley wanted to remind the board that because of the 50 foot State right of way, although they are proposing parking in the front setback, it doesn't go right up to the street, they are still 50 feet away from the center line before they even get to Mr. Welch's property in the front. So they are not looking at putting cars right up on the street, but rather up on the property line, which is allowed by special exception. They did present evidence at the last hearing regarding other lots in the Town where parking is similarly located close to the street without any incident. Mr. Tilsley added, I can't imagine any pedestrian problems here. They are providing in the plan for customer parking on the site, so to the extent that pedestrians might be attracted by these vehicles parked 50 feet from the center line they would have a place to park and wouldn't be walking up and down the street. In terms of vehicle safety, they are 50 feet off. They have a State driveway permit. They have reviewed it. They have accepted it. He

didn't know of any other particular concerns that the board has about vehicle safety and he tried to address the ones that the board raised at the last hearing.

Leon Methot asked if he could see a copy of the letter from State DOT. Mr. Tilsley stated that he submitted it with the rehearing submittal but had more if the board needed it.

Chairman Esenwine asked if the plan that was submitted for renewal is the same one that the zoning board has. Mr. Tilsley responded, correct, Mr. Welch has given those to Mr. Looney at the State showing the proposal that the board currently has, to be able to park cars in the front and side setbacks.

Approving Abutters: NONE

Disapproving Abutters: Mike Ryan, attorney was present on behalf of Karen & Richard Car. Mr. Ryan stated that first of all they don't believe that this letter from Pamela Mitchell is what counsel purports it to be as an acceptance of the State approving these parking spaces. His client called Mrs. Mitchell at the State and Mrs. Mitchell stated that she never saw any plans, all she was doing was re-approving the same site and the same driveway permit that he was given the year before. Not the plan for extra cars. She has never seen that plan. All she was doing was saying that the approval we gave you last year is good for another year. That is what his client is relating to him per conversation with Mrs. Mitchell. Mr. Ryan added, that if you read the letter from Mrs. Mitchell it doesn't say, what the counsel says in his motion, which is that the State has determined the driveway doesn't constitute a nuisance or serious hazard to vehicular traffic. That is not in the letter from Mrs. Mitchell, those words don't appear, and it just says that we are renewing your driveway permit. Mr. Ryan then asked the board for clarification, because it was indicated earlier that rehearing was granted and the board will only hear issues regarding safety. Mr. Ryan stated that it is his understanding that when a rehearing is granted it opens up other issues, not just the one issue that was denied. There are other issues. Mr. Ryan continued, one of the issues that the site plan, which was approved in 2001, has on it is that, in fact, the lot needs to be certain acreage. He never got a variance. It also indicates that the frontage has to be 200 feet and it's only 190 feet and he never got a variance for that. So that the plan that was approved by the Planning Board called for him to have a certain amount of acreage and a certain amount of frontage and he doesn't have those. It is not a valid site plan in the sense that he never went and got those things that he needed to have. Mr. Ryan stated that he is not sure the board can grant a special exception on this lot because this lot should not be used for what it is used now because he didn't do those things he needed to do to make it a valid site plan. He needed a variance because the Planning Board certainly didn't have the power to grant him the right to use it in violation of the zoning ordinance. Mr. Ryan stated the he doesn't think they were, it just exists on the note, and obviously that's a message to him that he has to do those things.

Tim Galvin stated that he has a question, that back in the Planning Board minutes of May of 2002 he was given a five day mandate to get things cleaned up or there was going to be a revocation of the original approved plan. Mr. Galvin stated that he is unsure what happened after that meeting. Mr. Galvin pointed out that if the plan was revoked this whole application is moot. Naomi pointed out that there was nothing sent to Mr. Welch beyond the June 4, 2002 letter. Mr. Galvin further added that if he is in still violation this whole thing should be remanded back to the Planning Board.

Mr. Ryan stated that they have a couple of further issues. The applicant came in for a special exception for off street parking pursuant to section 5 & 6 of article 24. But what wasn't addressed

was the buffer strip, which is called for in article 24.7 and in that it says that any new commercial activity adjoining any existing residential property. The applicant is a new commercial entity that abuts his client, which is a residence. As part of that he cannot be located within 50 feet of the boundary line. Chairman Esenwine agreed with Mr. Ryan and the board is aware of that. The board didn't get to the point of granting the special exception, which would have had specifications on it. The board denied the application. Mr. Ryan stated that he wanted to raise the point because if he is granted the special exception he will still have to come back in front of the board for a variance on the issue of a buffer strip. Chairman Esenwine again agreed with Mr. Ryan.

Tim Galvin stated that he had another question, if in fact the action that the board was taking at the time was based on this plan, which was inappropriately submitted by way of the stamp, then wouldn't it make everything in terms of the hearing moot, because it is an incomplete application. Chairman Esenwine agreed with Mr. Galvin.

Mr. Ryan stated that was another point he was going to make. There is the issue of whether the use or proposed use will have an affect on surrounding property. His client had an appraisal done on their property done by a Mr. Lavoie and the bottom line is that as the existing property next door is being used and especially if it was expanded would have an affect on his clients property to the tune of about \$28,000, which is basically 10-20% of the value of their property. He thinks that the board has to take that into evidence before granting a special exception that the existing business has some affect and to allow an expansion of it by putting in these parking spaces in , two of which are within 3 feet of their property. Which is an overkill in terms of wanting to put those spaces in other than the fact that he can't do his proposed addition out back unless he has them. It will have a profound affect on their property and the board has to take this into consideration. They have offered a copy of the report to the board for evidence.

Lastly, Mr. Ryan concluded that they don't really believe the letter from the State does what it is supposed to do. They don't think he got the variances he needed to in the first place for the site plan. They are not even sure that all the things that the State required him to do in terms of his initial permit were followed. They talk about some grading coming off of the highway and there isn't any proof that he has done those things. So for all these reasons that they urge the board to deny the rehearing for the special exception. They also agree that since Mr. Palmer's license has expired at the time, that the plan that was brought before the board is invalid and the special exception should not even have been considered.

OTHER BOARDS: Police Chief Myles Rigney was present. Chief Rigney stated that he would like to direct the board to condition #3 of article 6.1.4, which indicates that the proposed use will not be a nuisance to vehicular traffic or pedestrians. Chief Rigney stated that earlier today he met with the Department of Motor Vehicles and they do not concur that that is not going to create a nuisance or create a serious vehicular problems. As a matter of fact they are of the opinion that it will. Chief Rigney gave the board the following numbers to show how they arrived at the conclusion. If you were to come over the rise heading in the northbound direction, passing Autumn Hills campground, the road peaks. The road starts to drop down. That's one of the concerned areas that they would have. The reason for that is quite simple. At the point of observation of another vehicle it is a great concern based on speed. Presently that speed zone in that area is 45 MPH. At 45 MPH a person requires 49.5 feet to actually react to seeing a vehicle and applying the brake and in addition to that it takes another 107 feet for the average vehicle in the United States to be able to stop in that distance, that totals out at 156.5 feet. They were out today and took some quick measurements and he is not

claiming to be any type of engineer, but they use the same tapes they do at accident scenes. The width of that road is 25 feet, double yellow line, which would cut it down to 12.6, give away the 6 that would give you 12 feet. On the northbound side of the road there is no place for anyone to pull off. Any traffic that would be coming over the hill, would need a minimum, if they are doing the speed limit of 156.5 feet to see there was a vehicle turning in or stopped. The problem that we have is that it is nice to say the speed limit is 45 MPH but in reality people go a lot faster than that. If we go up to 60 MPH, you have got to have 272 feet to be able to see to properly apply that brake and stop that car. Chief Rigney continued, it states that under number 5, that the applicant presented evidence of specific dealerships in Town, it goes on to state that the evidence was provided by Mr. Palmer, surveyor. As earlier mentioned, Mr. Palmer has not had a license or been certified since 2002, so obviously that evidence as referred to in this motion would be questioned. Going down to number 6 in the motion, it states that in the renewal of the driveway permit at this location, the Department of Transportation indicates the appropriate authority, the State Department of Transportation, has determined that the driveway and the proposed use of the property does not constitute a nuisance or serious hazard to vehicular traffic. Chief Rigney stated, that again the Department of Motor Vehicles who reports to the DOT does not feel the same way. He also stated that based on some past performances here of "voodoo" with words suggests that perhaps the plan was never submitted along with the update for a driveway permit. Moving forward, as you know, that if you put a used car dealership here beside the road, you are going to have signs, special deals, etc., etc., that are made to be eye catchers. These eye catchers are going to tempt people. That driveway is approximately 15 feet in width with a very steep uphill grade. People are going to stop on the side of the road, just like we constantly see people do at yard sales and everything else creating a traffic hazard. Going back, I pointed out that the roadway is 25 feet, give or take 6 inches off the yellow line, you are talking a 12-foot strip. Again, going back to the factors that were mentioned before about the given speeds and prorating them out, what you are talking about is somebody stopped on the side of the road, looking over at perhaps a nice car to buy, and somebody coming down that roadway that now can't stop even at the posted speed limit, but more importantly has to pull out, go over the lines and meet traffic head on in the other side. That to the Chief is a nuisance and a traffic hazard. We talk about people not walking on the roadways, because that is a State Highway. I find it very hard to believe that we are going to park these used cars in the front, we are going to allocate the 50 feet that the State requires and tonight we took a measurement from the corner of the driveway to the open end of Mr. Welch's property, they came up with 103 feet. Now unless some property has been given from the two abutters, Chief Rigney found it hard to believe, one: that it makes the 200 feet, and two: if you add in the small wooded area and the width of the driveway the number 190 would be a lot more accurate and correct. Also, those numbers that were given earlier, Chief Rigney stated that he wouldn't say they were made for ideal conditions, but I will tell you that if you have lived here for more than a day, especially today, you know that if you come over that hill and you are doing 45 MPH and you have to lock up those brakes on a cold rainy day, you are not going to be stopping 100 feet or so down the road, because someone has just pulled out or is beside the road looking at these special car deals. Chief Rigney stated that he would like to ask to board to disallow this, we have enough hazards in this Town.

Tim Galvin asked Chief Rigney if he knows that in that particular area there are scheduled bus stops, elementary, middle school or high school? Chief Rigney stated that he does not have a definitive answer right now. Mr. Galvin then asked, being in agreement that the posted speed limit is 45 MPH, does the department have a history track of speeding citations or have they done a study of the general average rate of speed in that area. Chief Rigney stated that they haven't really worked that area for a specific time. Mr. Galvin asked if there was any traffic mechanism for tracking vehicle

accidents within the last 9, 12 or 14 months. Chief Rigney stated that they are trying to update their technology for the Selectmen to approve, but they don't have it readily available at this point.

Mike Ryan stated to answer the question of the bus stop issue, the bus stops currently in his clients driveway.

Public At Large: NONE

Rebuttal of applicant: Roy Tilsley stated that he would like to respond to the various points that were raised. Initially the letter from Pamela Mitchell, I don't think can be any more clear that she has seen this particular plan. The request to update/amend, not just renew, update/amend this driveway permit for the purpose of constructing additional parking areas for sales display and customer parking, that is exactly the plan you are looking at. There is no other to plan to update/amend for customer parking and sales display, she speaks specifically to the plan you have before you and I think that it is clear that the Department of Transportation has seen the plan and has approved the driveway permit with the plan. Mr. Tilsley continued, the fact is that the Department of Transportation has the jurisdiction over this driveway. They have determined that the driveway is safe. They have determined that the various distances and speeds are safe. If the Department of Motor Vehicles has a problem with that, they haven't done anything about it besides to tell the Chief about it. The authority, the jurisdiction has given him a permit and they are aware of the plans to park vehicles out front. The fact is that they are providing off street parking for customers so that they will come into the lot and park their cars, rather than park on the street. With the parking in the rear as it is now, it is not as likely that customers will do that, but they are in compliance with the proper regulatory authority. They would not have issued a permit if there was a nuisance or safety hazard with the driveway or with the proposed parking areas. Mr. Tilsley added, in terms of the various enforcement issues, please keep in mind, what we are asking this board to do is to approve a special exception to one part of the ordinance. Mr. Welch will still have to go to the Planning Board and have the Planning Board approve a site plan for anything he wants to do if and when we get a special exception. The Planning Board will certainly be addressing all the safety issues and all these types of issues as they always do as well as the other issues that they address. If there are enforcement issues on this lot, if Mr. Welch is not in compliance with his current site plan, or any building code or any prior decisions of this board, this Town has the authority to take enforcement actions. There are simply no enforcement actions pending against Mr. Tilsley's client right now. They were here in the springtime, in May, they met with the Planning Board regarding some enforcement issues. They were provided some time to clean it up and Mr. Welch did clean it up and there has been no action from the Planning Board since then. There are no pending violations. There is nothing pending, as far as he knows they are in full compliance. If there is an enforcement problem, Mr. Tilsley stated that he is sure that the abutter that has been here for every meeting is not shy about notifying the appropriate Town officials that they need to look at Mr. Welch's lot. Mr. Tilsley further added, I'm sure she's done that and there is nothing pending. The fact is that it is not an issue that is before this board. The issue that is before this board is the special exception and if there are enforcement problems they will deal with that when and if the Town takes appropriate action. Mr. Tilsley stated that he was not part of the original site plan process, but he certainly looked at the plan which contains the usual information regarding the existing lot and what is required, it seems to me that what they have is a pre-existing non-conforming lot and the appropriate Town officials issued the permit without requiring a variance because of it's grand fathered status. The fact that these figures are on the plan is not an indication that Mr. Welch is somehow required to grow his lot in order to get the plan approved. The Planning Board certainly would not have approved the plan if a variance was not required and had not been obtained. Mr. Tilsley continued, the issue was raised by Attorney Ryan regarding the 50-foot buffer to the side. Mr. Tilsley stated

again the Mr. Welch would accept a condition of 50 feet on the side buffer. They are willing to accept reasonable conditions from the board in order to be able to create a parking area in the front of the lot. The other issue that came up is the status of Mr. Palmer's stamp on the plan. If in fact the board rules that they have an incomplete application at this late date, they want to be clear that it would not preclude them from coming back with a properly stamped plan. Mr. Palmer has indicated to Mr. Tilsley that he could have this plan properly stamped by his staff within 30 days and if the board is concerned about that he would request a continuance to have a properly stamped plan submitted. Mr. Tilsley added that Mr. Welch and himself were just informed yesterday and should not be made to suffer from something that is not in his control. Mr. Tilsley stated again this is a commercial zone. This is an allowed use. The use has already been approved. The only question here is the parking. The driveway permit has been approved. The parking is allowed by special exception. There are no safety issues by allowing some parking out front in this type of a commercial zone. They think they have met all the requirements for a special exception. They have addressed the issue that the board raised in the denial in their motion for rehearing and Mr. Tilsley asked the board to approve the application subject to any reasonable conditions when it is considered later on tonight.

Being there were no further comments or questions, Chairman Esenwine closed this hearing at 8:46 PM.

Naomi Bolton stated that she would be stepping away from the table for this hearing.

Case #4203 William & Naomi Bolton
Special Exception, Article 28.7.1
Applicant is requesting permission to permit construction of a driveway and associated grading within an area that has been defined as a wetland.
Tax Map 412-226 42 Norris Road

Chairman Esenwine moved to accept the application as complete, June Purington seconded the motion, unanimous vote in favor (Methot, Purington, Esenwine, Galvin).

Naomi Bolton explained that the purpose of this application is to provide a second access to their property. This second access is solely for the purpose of access to the previously approved wireless telecommunications facility, but the access requires a minimal impact wetlands permit through the State of NH. A letter was received from State of NHDES dated November 18, 2003 indicating that they have received the Minimum Impact Expedited application and it has been accepted as administratively complete. A letter from the Weare Conservation Commission dated November 29, 2003 recommending approval of the application based on the fact that the WCC signed off on the Expedited Application at their regular meeting of November 12, 2003. Mrs. Bolton then proceeded through the seven conditions required for a special exception, the following is the responses.

1. The specific site is an appropriate location for such a use or uses in terms of overall community development: This site is an appropriate location for a second driveway access. The wetland crossing has no impact on overall community development.
2. The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighboring area: The wetland crossing will have no adverse affect on the adjacent properties or their property values. Proper drainage, erosion and sediment controls are designed to avoid adverse affects on adjacent properties.

3. The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians: Wetlands impact will have no impact on vehicular traffic or pedestrians. The crossing allows for access for vehicles to the upland area for the telecommunications tower.
4. The proposed use will not cause an undue burden on the Town through the provision of basic Town services: The wetland crossing has been designed according to Town requirements for an access way and will not cause an undue burden on the Town through the provision of basic Town services.
5. Adequate off-street parking be provided if determined necessary by the Zoning Board of Adjustment: There will be adequate off street parking located at the facility. No wetlands are being impacted or altered for parking.
6. A buffer may be required to screen neighboring uses from the proposed use. Buffers may be fence screens, dense planting of suitable trees and shrubbery, or naturally occurring shrubs and trees: The wetland crossing is for access to the rear of the lot, the majority of the trees will remain for a buffer.
7. The Zoning Board of Adjustment, in granting any special exception, may include such restrictions or conditions to insure compliance with this section: The applicants don't see any need for restrictions to ensure compliance except that the special exception be subject to receipt of NHDES approval.

Approving Abutters: NONE

Disapproving Abutters: NONE

Public At Large: NONE

Other Boards: NONE

Being there were no further comments or questions, Chairman Esenwine closed this hearing at 8:52 PM.

Naomi Bolton retained her position back at the table for the remainder of the evening.

Case #4303 Northlake Holdings (Owner: White Tail Realty, Inc.)

Variance, Articles 24.3 & 28.8

Applicant is requesting permission to continue the industrial use in the commercial zone and encroachment of up to 30 feet in the 50 foot wetlands buffer.

Tax Map 412-200

10 North Riverdale Road

Tim Galvin moved to accept application as complete due to prior conversations and meetings with Naomi, June Purington seconded the motion, unanimous vote in favor (Methot, Purington, Esenwine, Galvin). Attorney Tony Marts and Paul Mansback were present to explain this application. Mr. Marts explained he is here on behalf of Northlake Holdings, which is affiliated with New England Sheet Metal in Goffstown. They are a HVAC contractor and they are fabricators of products that relate to HVAC installation. Mr. Marts stated that he would like clarification from the board on Article 28.8, which was adopted just last year and provides a 50-foot buffer from the wetlands delineation line. That is a new buffer in Town and they are proposing the addition of two loading docks that would be in that buffer. The ordinance itself says that existing lots of March 11, 2003 are not subject to this restriction. But in discussions with Naomi and Everett as well as both the Chairman of the Planning Board and the Chairman of the Conversation Commission, we determined that we would all like clarification from the Zoning Board, so that what that section says is that the lot itself is not subject to the ordinance with that restriction. They believe that is the appropriate application of that language and they filed for a variance just to put that issue before the board. So on

that particular issue they would like clarification. The board discussed this particular issue. Leon Methot moved that the applicant is in compliance with Article 28.8 and is exempt from the requirement for the 50 feet setback, June Purington seconded the motion. Vote: 3 in favor (Methot, Purington, Galvin) and 1 opposed (Esenwine). Therefore the applicants don't have to address the five points of hardship for that particular article.

Mr. Marts stated that the second issue they are here on is, the industrial use in the commercial zone under section 24.3. This is a commercial zone. This is the old Hexaport Building on Riverdale Road and Northlake Holdings particular use is an industrial use. It is a metal working shop. Hexaport built big cold rolled steel structures. Mr. Mart's client has an assembly line to run sheet metal through that makes connectors to HVAC ductwork. It is a certainly a much smaller scale than Hexaport but it is still metal working, and technically it doesn't fit under your definition of commercial. What they really have here is light manufacturing, assembly of previously prepared materials and metal-working; three items that under the industrial definition are clearly industrial. There is no evidence that when this building was originally constructed any variance was granted. They are just asking this board to provide a variance to allow them to have this industrial use.

Chairman Esenwine asked Mr. Marts if he knew when Hexaport started there. Mr. Marts responded, he believed in 1994. This was the building that was built just for their industrial processes, so it wasn't built for a commercial building it was built as an industrial building.

Paul Mansback, architect was present to explain the building addition to give the board a sense of what is being asked for. The addition is basically a loading dock that will allow for two trucks to back up. The dock will have a sheet metal enclosure, cut right into the side of the existing building. Forklifts will put the product into trucks to be delivered or take rolled stock out of trucks and bring it in for manufacturing. A retaining wall will be built that allows the grade to be dropped so that the trucks can back up flush to the loading dock.

Mr. Marts stated that what they are actually looking for, in terms of the variance on the wetlands buffer, if it does apply, is a variance that would allow the construction of that specific addition which is literally a two bay loading dock. The loading dock is at floor grade of the building.

Leon Methot asked why the loading dock couldn't be located right around the corner? Is it a building structure situation? Mr. Mansback responded, that the ideal manufacturing situation would be to come around exactly like we are proposing, back in and take it away. There is another issue here and that is every time they have done a back in loading dock, in the winter it becomes an outdoor swimming pool, no matter what type of drains they do, which then makes 9 months of winter and an unusable facility. This proposal grades naturally to the lay of the land and pitches away from the building.

The board asked about any leakage from the trucks that might be left there. Mr. Mansback responded that in this particular operation the truck would back in a trailer and leave the trailer there to be loaded and the truck would go elsewhere to another job. Typically this is just a juggling of just trailers and not parked trucks.

Leon Methot moved to waive the reading of the five points of hardship; Chairman Esenwine seconded the motion, unanimous in favor (Methot, Purington, Esenwine, Galvin). For the record the five points of hardship are being included, which are as follows:

1. That there **will not** be a diminution of value surrounding properties as a result of the granting of this variance because: This is a pre-existing use of an existing building, which has been specifically designed for industrial applications. The property and adjacent similar uses are contained within contiguous parcels of over 16 acres with significant natural buffers and at least 350 feet of separations between existing buildings and adjacent property boundaries.
2. That the granting of the variance **will not** be contrary to the public interest because: This is a request for confirmation of an existing use which has been allowed as a matter of course by the Town and provides an important tax base and employment opportunity to the community.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
 - a. As applied to the petitioner's property will interfere with the petitioner's reasonable use of their property, considering the unique setting of the property in its environment for the following reasons: The only reasonable use of this property is its existing use as well as the industrial uses for which the building was specifically constructed. The property is also uniquely situated in an isolated area with significant industrial characteristics.
 - b. As specifically applied to the petitioner's property has no fair and substantial relationship to the general purposes of the zoning ordinance for the following reasons: The use of this property for commercial uses, including retail and similar uses provided for under the Zoning Ordinance, is inappropriate given this property's lack of visibility, lack of highway access, and remoteness from existing retail or residential centers of the community.
 - c. If relieved by a variance, will not injure the public or private rights of others for the following reasons: The remoteness of the property, lack of high density residential development, existing natural vegetative buffers and distances between existing buildings and abutting property lines support the proposition that no injury to the public or private rights of others will occur if this variance is granted.
4. That by granting this variance, substantial justice **will be** done because: The owner has completed construction of the industrial building and has consistently used the property for industrial purposes with the knowledge and consent of Town and merely seeks to formalize the consent in order to assure that acquisition and financing can be accommodated.
5. That the use contemplated by the petitioner as a result of obtaining this variance **will not** be contrary to the spirit of the ordinance because: The spirit of the Zoning Ordinance under both Commercial and Industrial Districts is similar and well served by the granting of this variance.

Approving Abutters: NONE

Disapproving Abutters: Charles Houghton, Jr., 56 South Stark Highway, stated that he is the closest abutter who will be the most affected. He is concerned with the wetland and maybe they are going to think that it is really OK to move it 10' or 5' or whatever, because it is so unclear now, as to the whole situation. Mr. Houghton stated that there is a ton of wildlife in there. His property is located where the culvert is that divides the two pieces of property. Mr. Houghton wanted to know the distance between the new loading dock and his property. Mr. Mansback showed Mr. Houghton the plan and it appears he is quite a distance away. Mr. Houghton stated that he is also concerned and asked if they were going to use any salt or anything like that in front of the dock that might runoff into the wetlands as well. He has a bad taste after having Hexaport in there, because he had so many

times he had to call because they were in violation of their site plan, because they used to run night and day. Mr. Mansback responded that they have been told of that concern and he sent a letter to Mr. Stone describing the hours of operation and this entire operation has to take place inside because anything that they make would rust. Mr. Marts stated that they would represent 7 AM to 7 PM, a minimum of six days a week. Mr. Marts stated that he would like to make two points on Mr. Houghton's issues, for his benefit and the boards. One is that they point out in their application; our building is no closer than 350' to the nearest lot line, including Mr. Houghton, so there are sufficient buffers between all the neighbors. Secondly, Northeastern Sheet Metal today is located in the village of Goffstown on the Piscataquog River and purchased the abutting property, the Public Works Department and in the process became a much better neighbor, cleaned up the problems at the Public Works Department and now operates a significant industrial facility literally right in the village, right on the river without any issues or concerns from the Town or any Conservation Commission.

Chairman Esenwine stated that he thought Mr. Houghton brought up a pretty good point in regards to the loading dock area, which relates to his own concerns, which is salting or calcium in the area in the winter area. That is graded to runoff right into the wetlands, so that salt and calcium would be going right in there. Mr. Marts suggested that they could file a drainage plan with the Building Department that is acceptable to them in terms of what the actual run off will be, they haven't done any real calculations at this point, but that would be a realistic way to deal with that issue.

Mike Brassard, 23 North Riverdale Road, stated that his first concern was about the wetlands, but the board is addressing with that. Mr. Brassard stated that it has been cleaned up a lot and his concern with the aquifer is the protection the board affords that because it offers him a buffer from the building and his property. Mr. Marts stated that no trees would be removed at all for this 20 foot loading dock to be installed. Mr. Brassard's stated that as a suggestion he would like to have a contact person for New England Sheet Metal in case they do have any issues, a phone number of someone they could talk to would be appreciated. Mr. Marts agreed to give that to the abutters.

Don Dawson, 36 North Riverdale Road, echoed Mr. Houghton's concerns for the record and he is on the wetlands side.

Public At Large: John Macausland, Weare resident and a member of the board of the Piscataquog Watershed Association, stated that he is sorry that the Chairman's view regarding the 50 foot setback to the wetlands being not exempt didn't prevail with the board and he hoped the board could submit an amendment which would clarify language because it affects the interpretation that the board adopted means that unless there is a subdivision the ordinance has no affect whatsoever. Mr. Macausland stated that he agreed with the Chairman that certainly didn't seem to him that that is what we were voting on when we voted on it. The second concern is that he would like the board to take very seriously the concern about the wetland, which is not just any wetland; it is the wetland, which is essentially a piece of the river. He stated that he would feel better if a drainage study came back before this board rather than simply lodging with the building department because the enforcement of the various building code laws is not very vigorous and something should be put in place in the public eye before this board.

Rebuttal of applicant: Mr. Marts stated that he would like to just confirm that this application is just asking for a variance to allow this specific industrial use in the commercial zone, subject to such reasonable conditions as the board may feel apply to their particular site and their particular use.

Being there were no further comments or questions, Chairman Esenwine closed this hearing at 9:43 PM.

Case #4403	Richard Head & Melinda S. Gehris Administrative Appeal, Articles 3.2, 27.3.9 & 4 Applicant alleges that an error was made on 10/09/03 by the Planning Board, by issuing a conditional approval for a 46-lot cluster development on Flanders Memorial Road. Tax Map 405-073	236 Flanders Memorial Road
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Richard Head was present for this hearing. Mr. Head stated that he was here with his wife, Melinda Gehris and they are the owners of lots 74 and 74.1, 74.1 being the abutting lot to the proposed to the cluster subdivision on the Paulding Farm up on the top of the road. Mr. Head handed around copies of a supplement to the testimony that is being presented tonight. The following is the paperwork:

December 2, 2003

Weare Zoning Board of Adjustment
Flanders Memorial Road
Weare, NH 03281

RE: Administrative Appeal by Richard W. Head and Melinda S. Gehris

Zoning Board Members:

Please accept this letter to supplement the testimony presented at the hearing on December 2, 2003 regarding the above referenced project. As owners of property located at 192 Flanders Memorial Road, Lots 405-74 and 405-74.1, we will be directly and adversely impacted by the 46-house cluster development proposed for construction on the Paulding Farm. We have filed an Administrative Appeal of the Planning Board's decision to approve the proposed cluster development.

Zoning Ordinance, Article 4 (“Lot)

Article 4 (definition) defines “lot” to mean “a parcel of land at least sufficient in size to meet the minimum requirements of this ordinance for use, coverage, and area and to provide required yard, setbacks, and open space. Newly created lots shall be four sided and rectangular in shape unless extenuating circumstances, such as existing lot lines or similar conditions require it to be different.”

Most of the lots proposed by the Holly Hill do not meet the definition of “Lot” as stated in Article 4. Most are not rectangular, and several have six sides. The lot line against which the lots will abut is straight, and therefore does not create a circumstance that requires non-conforming lot shapes.

Article 27 stated the requirements for a cluster subdivision. Article 27 does not include any provision that would allow a developer to present a project that does not comply with the basic definition of a lot. For this reason alone, we request that the Zoning Board overturn the decision of the Planning Board to approve the plan as proposed.

Zoning Ordinance, Article 27.3.9

Article 27.3.9 states: "Buffer strips: Cluster housing shall not locate within one hundred (100) feet of the property line of any other residential property and shall provide and maintain a strip of nativized plantings along and within the buffer strip."

The plan approved by the Planning Board violates the requirements of Article 27.3.9 for two reasons. First, approximately 9 of the lots within the proposed cluster development fall on the property line of our property and are not setback 100 feet. Second, even if no property line setback is required, the plan does not "provide and maintain a strip of nativized plantings along and within the buffer strip." Each of these is discussed below.

First, the lots that abut Lot 74.1 use our property line as a common property line. The plan, as proposed, violates the requirements of Article 27.3.9. As proposed the lots along the eastern boundary of the subdivision (Lots 73-1 to 73-15) directly abut the property line. No common boundary strip is called for in the plans. Instead, the individual privately held lots would have a common boundary with Lots 74.1 (our lot). The buffer required under Article 27.3.9 is designed to provide a 100 "buffer strip" of common land. In this case, the plan includes approximately 15-segmented pieces, each of which is within the proposed buffer. Each segment within the buffer will be individually owned and maintained by the individual property owners. Article 27.3.9 requires that the buffer be designed as a strip, thus requiring that it be a commonly owned continuous piece of land. The plan approved by the Planning Board does not comply with one buffer strip requirement.

Second, the plan does not incorporate plantings required by Article 27.3.9. The plan only calls for a one time per year zone within 100 feet of the boundary with our property. The entire length of the cluster development along lot 74.1 is currently an open field. Under the developer's plan, each of the individual lot owners would be required to leave the grass uncut, allowing only one cut per year. In essence, the "nativized plantings" proposed by the developer is tall grass. The intent of Article 27.3.9 is to provide a thickly screened buffer between the cluster housing development and abutting landowners. This is essential to preserve the integrity of the boundary with private properties that abut the cluster development. Article 27.3.9 not only requires planting of nativized plantings, but requires that plantings be "along and within" the buffer strip. Thus, the plan must not only call for plantings, but they must be well distributed throughout the length and width of the buffer strip.

The plan approved by the Planning Board fails to meet the requirements of Article 27.3.9 for the two reasons discussed above. The Planning Board's decision should, therefore, be overturned.

Zoning Ordinance, Article 3.2

Article 3.2 states: "Performance Standards: Any use of land shall not be obnoxious, offensive or injurious to the public health and safety or the comfort, peace and quiet enjoyment of the community or neighborhood, or cause, disturbance or annoyance because of vibration, noise, smoke, fumes, glare, odor, dust, gas fumes, chemicals, radiation or other waste materials, or by reason of danger of fire or explosion, or result in reduction of property values in the neighborhood."

On average, a single-family residence will generate 9.57 automobile trips per day. Upon completion, the proposed cluster development will generate roughly 450-500 additional vehicle trips

on Flanders Memorial per day. This is consistent with the projections of the developer's traffic study. These trips will be in addition to vehicle trips generated by existing houses as well as new development on and near Lake Horace. Flanders Memorial Road is commonly used by the lakefront homeowners to access their properties.

Flanders Memorial Road is a historic road within the Town of Weare. The road has maintained its historic character and leads to some of the oldest homes in the Town. The Paulding Farm itself affords a unique open space within the Town, with views that include Mount Washington in the distance. Traveling from the Paulding Farm toward Route 114, a driver drops down a steep hill with two sharp turns near the top and enters another turn at the juncture with Duck Pond Road. Flanders Memorial is a narrow road that empties onto Route 114. Our property lies on the outside corner of the first sharp turn and the inside corner of the second sharp turn. A driveway to Lot 66 lies on the outside of the second sharp turn about halfway down the steepest portion of the hill. The barn across the road from our house has already been the victim of one car accident. Accidents on the hill are common, especially in the winter.

At the intersection of Route 114, a series of driving hazards are presented. Route 114 is itself a busy state road and is a major traffic corridor. Traffic enters and exits the school grounds directly across from Flanders Memorial. Leaving Flanders Memorial, the view to the left is limited by a curve on Route 114. Assuming it reopens, traffic also turns into and out of the Weare Center Store. During the winter, snow banks build up both to the left and right of the intersection, further limiting views. A traveler on Flanders Memorial Road must pull out into Route 114 in order to see traffic coming from the left when the snow has built up.

Although the traffic studies indicate that Flanders Memorial Road can handle the number of additional vehicles, the traffic studies did not perform the evaluation necessary for the determination of whether the increase in traffic will be "injurious to the ... comfort, peace and quiet enjoyment of the community or neighborhood." For example, testimony before the Planning Board indicated that the estimated wait at Route 114 will be as much as ninety seconds. Across Route 114 from Flanders Memorial is the entrance to the school. Cars from throughout Weare enter this particular intersection to drop off and pick up kids at the school.

As is common with many antique homes, many of the houses on Flanders Memorial Road are situated close to the road. The southeast corner of our house, for example, sits approximately fifteen feet from the road. The barn door across the road from our house is approximately 1-2 feet from the paved surface. Whether or not the additional vehicles can travel down Flanders Memorial Road without crashing into one another is not the only issue. At issue is whether an additional 500 vehicle trips up and down the narrow winding confines of the road will adversely impact the residents of the road. There was overwhelming testimony presented to the Planning Board that traffic would adversely impact residents on the road. During one meeting, a Planning Board member commented that he traveled through the intersection of Route 114 and Flanders Memorial one morning and described it as a "nightmare." That nightmare is not allowed under Article 3.2, and for that reason the Planning Board's decision should be reversed.

Conclusion

For the reasons outlined in this letter and in the testimony presented, we respectfully request that this Board reverse the direction of the Planning Board.

Very truly yours,

Richard Head
Melinda Gehris
192 Flanders Memorial Road
Weare, NH 03281"

Approving Abutters: NONE

Disapproving Abutters: Attorney, Robert Murphy and Jim Coughlin, trustee of Holly Hill Farm Trust were present. Mr. Murphy stated that the board had an initial question as to whether all of these points are within your subject and jurisdiction. Mr. Murphy added, that the board needs to know that these people have filed an appeal of the Planning Board's approval to the Superior Court and the reason for that is that it is not really clear under the statute. Yet in the Supreme Court they have only ruled on two of these cases to Mr. Murphy's knowledge and they haven't given a real black and white definition of what's within your jurisdiction and what's not. At least some of these points that have been raised are clearly within the Planning Board's prerogative in ruling on the application and if that's all they have done and what's being asked of this board is to sit as a super Planning Board, clearly that is inappropriate under the statute and under the Supreme Courts interpretations. At least on a preliminary basis the complaints about the way that the Planning Board interpreted the traffic studies and whether or not they felt that this was hazardous or obnoxious under the performance standards. Clearly the Planning Board did what it was supposed to do. It was there job to hear the evidence on that. They heard testimony from April until October from traffic engineers, and from many other people. There were many, many hours of presentation before they ruled on those points and to suggest that you can come in here on a few short comments, overrule on what they did in such great detail, just flies in the face of where they are. Mr. Murphy continued, the true jurisdiction that you have is to rule where they have interpreted the zoning ordinance. It seems to Mr. Murphy that as a preliminary matter, this notion of whether or not the 100 foot buffer is complied with or not. Whether their interpretation that it can be lot by or lot as opposed to common areas and they would like to speak to that directly. But the other two points, whether or not the lots conform to definition of lots, or whether there are extenuating circumstances for the design that was laid. That is the Planning Boards job to make that determination, not this boards job to come in and say that the Planning Board is correct or the Planning Board is incorrect when it made that determination. It did not interpret the ordinance any particular way it simply applied it and so it's not within this boards appellant jurisdiction. The performance standards, again they didn't interpret it they simply applied it, and so it is not within your appellant jurisdiction. Mr. Murphy stated that what he would like to do is to have Jim Coughlin come up and talk to the board as to how this plan got approved.

Jim Coughlin, trustee of Holly Hill Farm was present. Mr. Coughlin explained that they have been going to the Planning Board since April of this year, going over these issues. These issues that Mr. Head has brought forward are issues that were brought forward in May, August, September, October and November. The Planning Board construes the 100-foot buffers for the open space concept just like he has shown on the plan. Mr. Coughlin stated that he previously did another project last year in North Weare and it was construed the same way. Mr. Coughlin added, that how the Planning Board views that 100 foot buffer is that in a grid lot, 2 acre, 200 foot of frontage, you have a rear setback. In a cluster you don't, there is no setback, there is no individual size lot, and they leave that up to the board to decide. So the 100-foot buffer to them is a 100 feet from the property line inwards. Normally in a grid lot you would have a rear setback of 25 feet. They have extended this further to

make it a 100-foot from the “cluster housing” it doesn’t say “cluster lot” that is why the Planning Board interprets it in that manner. In regards to the irregular lot shapes, he had been working with the Conservation Commission six months prior to starting the meetings in April. He had three concepts A, B & C. One was for a grid system throughout the entire parcel with no open space. Another was for a 68-lot cluster development through the entire parcel, crossing Breed Brook, using most of the land, except reserving 50% according to the cluster ordinance. If you look on the plan there is a chart and soil types determine the number of lots in a cluster, which outcome of that was 68 lots. The abutters objected to that kind of density so they reduced it and they continuously reduced them. They gave view easements. They put in underground utilities. This was a collaborative process with the Planning Board and they took great strains. They deliberated, they debated, and they discussed all these issues and were part of a whole process. The same was done with the traffic report. The Planning Board made them hire a traffic consultant to give a report and the Town’s traffic engineer reviewed the report at the applicant’s expense. All this has been reviewed and discussed over 6-7 months with the Planning Board. As far as the project itself, they have agreed to phase it over a four-year period, which is not required, but they voluntarily did that to do the less impact during that period of time. Mr. Coughlin closed by adding that he felt that they have complied with all the requirements; they have discussed these issues with the Planning Board in detail and have gone over them and believed they have met all the requirements. The open space, which represents 66% of the property, approximately 100 acres, will be deeded to the Town with a conservation easement to the PWA (Piscataquog Watershed Association). They had several meetings with Mr. Head and several other abutters to go over these issues. The Planning Board, before any final decision, took the letters from all the abutters, discussed them and debated them and came up with this final plan.

Mr. Murphy then continued, to explain to the board why they think the Planning Board correctly interpreted the ordinance on this 100-foot setback. There is a principal of statutory construction that states that if an agency consistently interprets its regulation one way and the legislative body doesn’t go back and change it, that is an endorsement of the interpretation that the agency has given to it. The Planning Board has consistently interpreted this 100 foot buffer in a cluster development lot by lot and the legislative body has not gone back and changed that, but what the courts say in that situation is, that is an endorsement or approval of their interpretation of the statute. The other thing that Mr. Murphy added was, that if you take a look at the definition of cluster housing on page nine of the ordinance, section 4.1. Cluster Housing in kind of a flexible concept. It talks about having housing needs clustered on a lot or lots. In terms of section 27 of the ordinance it redefines the setbacks for the frontage and the sides, but nothing for the back. Now the point there is that it fits in very nicely with 27.3.9 as pointed out which talks about the buffer being from housing, not from clustered lots. In other words this could have been written to require a 100 foot dedicated strip as Mr. Head is suggesting, but it wasn’t written that way. It was written to require a 100-foot buffer from the housing itself. This is not the only place that buffer strips are used within the ordinance. There is a buffer strip required when you have industrial or commercial abutting residential property. In neither of those situations does the Town require that there be a dedication of a separate piece of property for common area and this should be construed the same way. It would be a taking if you were going to have an open space requirement and now add a buffer strip requirement on top of that, what you are doing is squeezing the buildable portion into a smaller and smaller piece of the parcel. Mr. Murphy stated that the point that he wanted to leave the board with on this parcel is that, this was not the first design it was a negotiated design. The Planning Board’s job is to try to take into account all of the different interest of the people coming forth and there was significant amount of testimony put before them by the Conservation Commission and the Piscataquog Watershed Association which

all had an interest in keeping all the development away from Breed Brook and that is why it was all squeezed up against the boundary and the open area to the side, which was the compromise that was reached in the Planning Board process to get to this point. The next issue raised has to do with the nativized plantings, which the ordinance doesn't define what it is for the Planning Board. It leaves it up to the Planning Board's discretion and again testimony was provided and reached a compromise on this. There was a real concern expressed from the public that this development was going to take away the views of Mount Washington and Mount Kearsarge by overbuilding. The compromise was a view easement was given and this nativized planting was imposed because that is what is there now, an open field. The final point of lot shape, if you look at the definition of cluster housing in article 4.1 obviously there has got to be some flexibility in the interpretation here, Mr. Head is exactly correct. Mr. Murphy added, we do urge that that's the way the Planning Board interpreted the ordinance in this case for a particular purpose and that was to give the developer a reasonable amount of developable units. This was a concept that came in as a 51 lot and was negotiated down to 46 units. The traffic issues are really under their jurisdiction, and Mr. Murphy asked that the board affirm the Planning Board's decision.

Public At Large: NONE
Other Boards: NONE

Rebuttal of Applicant: Mr. Head stated that he has a couple of comments. First is that it almost sounds as if the Holly Farm Trust was forced to build this particular cluster subdivision. When the plan was first provided as part of the abutters notice it included 51 units, and now if you compare it to what was provided to the board in miniature, it almost sounds like at one point this was in the middle that basically the Planning Board pushed this thing up against our property. If you compare what was there before and originally presented to the Planning Board, this was the only plan submitted. The other concepts were talked about but not submitted. It was originally a 51-unit subdivision; some units were taken away from the Breed Brook area and increased the number of units in another area. The area Mr. Head is discussing is in fact not substantially different then what was originally presented to the Planning Board during the first Planning Board meeting in the spring. Mr. Head continued, so he very strongly disagrees that the Planning Board forced this into a very tightly knit cluster against their property line. That is not in fact how it was presented to the Planning Board. Mr. Head stated that he also heard them say that we want you to have an open field, in fact that was the only option that was presented to the Planning Board in terms of what would happen within the 100-foot buffer. So he would dispute that the Planning Board almost insisted that it would be a no cut open field. That was the plan that was presented to the Planning Board. Mr. Head stated that beyond his property line it is forested, and the 100-foot buffer along the property line is not in the view easement. The 25 foot setback that was discussed is the minimum and they are not prohibited to go beyond it is simply a statement of what the minimum setback is, they can certainly go bigger. Mr. Head stated that he also felt that it is not the Town's obligation to maximize their profit, by the number of lots they put onto a particular subdivision. It is to comply with the requirements and the obligations to the letter of the ordinance. The letter of the ordinance is fairly specific in the terms of lot. The word lot is a definite word used within the definition of cluster housing. Being there were no further comments or questions, Chairman Esenwine closed this hearing at 10:35 PM.

Case #4503 High Rock Development, LLC
Special Exception, Article 19.1.2
Applicant is requesting permission to allow multi-family housing.
Tax Map 110-077 Twin Bridge Rd/Daniels Rd (Private)

Tim Galvin moved to accept the application as complete; June Purington seconded the motion, unanimous vote in favor (Methot, Purington, Esenwine, Galvin). Attorney Tricia Hayes was present on behalf of High Rock Development. With Ms. Hayes was surveyor, Art Siciliano if the board had any specific questions. Ms. Hayes stated that the property they are speaking about this evening is Tax map 110 Lot 77, which consists of 57.17 acres and it is off of Twin Bridge Road. They are seeking a special exception to allow for multi family housing in a residential zone. The proposal is for 23 upscale town house style apartments, which would be attached and in groups. Ms. Hayes gave the board building plans to show a mock up as to what the buildings might look like. The property would have two floors, between 2-3 bedrooms, a single car garage, but there would be parking available for two automobiles. Chairman Esenwine asked if this is housing or is it apartments? Ms. Hayes responded, it is town house style apartments, so they are attached units, sort of like a condo but it is an apartment. Leon Methot added, so it is an apartment complex. Ms. Hayes responded, that is correct. Chairman Esenwine asked if this is geared to any particular population or age group? Ms. Hayes responded, no it is open to everyone. Leon Methot asked, isn't this kind of premature to be here instead of going to the Planning Board first? Chairman Esenwine stated that a special exception is needed for multi family housing. Mr. Methot responded, that the Planning Board could make it conditioned upon the special exception. Mr. Methot added that it looks like there may be residents here that will be asking questions that this board may not be able to answer. Ms. Hayes then went through the seven conditions needed for a special exception as follows:

1. The specific site is an appropriate location for such a use or uses in terms of overall community development: This site is an appropriate location for multi-family housing in terms of overall community development. The specific site in this matter is zoned residential, and the proposed use is permitted in residential zones. The proposed use is also appropriate in terms of overall community development. In the Town's Ordinance, the Town anticipated and planned for multi-family housing in the community's overall development by citing it as a permitted use in a residential zone. Therefore, the use is consistent with the Town's planning of overall community development.
2. The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighboring area: The proposed multi-family dwelling will not cause any significant diminution of the surrounding property values. The proposed use will meet the Town's standards, and because it is a residential use in a residential zone, it is consistent with and will not substantially affect the residential character of the neighborhood.
3. The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians: The multi-family housing will contribute to the traffic flow in a manner consistent with the typical flow of travel in this residential area. Therefore, the proposed use will not be a nuisance or serious hazard to vehicular or pedestrian traffic levels.
4. The proposed use will not cause an undue burden on the Town through the provision of basic Town services: The proposed use will not significantly affect the Town through the basic provision of Town services. All frontage will be taken off of Twin Bridge Road, which is an existing, accepted Town road, so there will be no undue burden on Town emergency vehicles. Sewer, water and other public facilities will not be affected by the proposed use.
5. Adequate off-street parking is provided if determined necessary by the Zoning Board of Adjustment: Adequate off-street parking is available during construction of the proposed use. Appropriate off-street parking will be available after the proposed multi-family housing is constructed.
6. A buffer may be required to screen neighboring uses from the proposed use. Buffers may be fence screens, dense planting of suitable trees and shrubbery, or naturally occurring shrubs and

trees: A buffer may not be necessitated by this application, by the Applicant is willing to cooperate with the suggestions of the Town on this matter.

7. The Zoning Board of Adjustment, in granting any special exception, may include such restrictions or conditions to insure compliance with this section: The Applicant is willing to cooperate with the Board to ensure that the proposed use complies with the Town Ordinance.

Tim Galvin asked if these plans meet the criteria under article 26? Article 26 is specific to multi-family housing, minimum of 200' of frontage required on Class V Town roads? Chairman Esenwine asked the classification of the road that is going into these apartments? Ms. Hayes responded it would be a paved private road into the development. Art Siciliano stated that to meet the 200' frontage requirement, it would have to be a Town road. Chairman Esenwine stated that this board has been consistent and that development will have to be on a Class V town road. Mr. Siciliano stated that they are going to have to design a Town road to be built to Town specifications.

Chairman Esenwine stated that the plans don't show any well or septic locations and he is concerned with any type of leaching that might take place in this close vicinity of Daniels Lake. Leon Methot asked if the Planning Board was approached on a conceptual basis for this plan. Ms. Hayes stated that going to the Planning Board is not required; they can come to this board first, technically. Chairman Esenwine, responded, technically you can, but if you go back to the Planning Board and changes are made then you will have to then come back to this board again. Ms. Hayes responded that she agreed.

Mr. Siciliano stated that they are here to obtain a special exception based on the concept of multi-family housing. Ms. Hayes stated that at this point they are not asking for the particulars to be all hammered out and set forth tonight on all those associated issues. They are seeking a special exception for a permitted use in the residential zone. That is all they are looking for tonight.

Leon Methot stated that he would like to state that he will vote no on this because you are asking for a special exception on a conceptual plan and that is why he asked about is going to Planning Board first. Technically you don't have to but in practice in this Town it has been done that way, almost regularly. The Planning Board goes through the whole process first and then grants a conditional approval upon getting a special exception.

Ms. Hayes stated that she sees Mr. Methot's point and thinks it is an excellent point, but the point is they can't get around planning. They have to go to Planning and the abutters are welcome to join them there as well and they will have to go through the whole thing.

Chairman Esenwine asked Ms. Hayes, then you are asking for a decision tonight? Mr. Hayes responded, unless there is something that the board doesn't have that they need to make a decision. Chairman Esenwine added, no we have enough to make our decision if you want.

Mr. Siciliano added, what they want for, as the judgment is that you don't want to review this because the board doesn't think they are ready for this. Ms. Hayes stated that if this board wants them to go to the Planning Board for a conceptual review they would be more than happy to. She felt that on the basis of what the requirements for a special exception they have met the requirements.

Mr. Methot stated that there was information posted yesterday that they might not be aware of and that is that the this Town will be invoking an Interim Growth Management which means that even if

you got the special exception approved, you couldn't do this for a year. The Planning Board won't even hear it until next year.

Ms. Hayes stated that she would do whatever the board advises. The Board explained that it is not a question of trying to make it difficult, but they aren't sure that where they are at is going to best serve them by doing this now.

Chairman Esenwine stated that he doesn't want the board to get into an issue of where they are, or how they are, or what they could do. We have an application before us that they feel is adequate. They presented their case. We have the information. We have taken the testimony. We will see if anybody else has anything to say and then we will render a decision.

Ms. Hayes responded, that she is not trying to be difficult either, but if the board is suggesting at this point is that they should withdraw it for the conceptual plan review so that you will be more comfortable to review it they would be amendable to that. They just want to do the right thing for her client and the Town as well.

Tim Galvin pointed out that the abutters were notified and they have taken the time to sit here. They should be able to speak and possibly offer the applicants representative their views and insight. Then let the applicant decide what they want to do. There may be suggestions that become very helpful from a lot of different perspectives, good neighbor perspective, planning, building, strategy, etc.

Chairman Esenwine stated that would be a good suggestion but asked that for those that wished to speak he would like to see their comments focused on the project and not getting into the issues of the Planning Board.

Approving Abutters: NONE

Disapproving Abutters: Heidi Nippi, 71 Daniels Road, abutter and licensed real estate broker, she questioned that if there is an interim growth ordinance posted how will that affect the board's decision and can a decision even be made? The board responded that a decision could be made because the application was received and processed prior to the posting. Mrs. Nippi expressed her concerns, the location of these apartments the elevation is severe in reference to their property. There currently is water run off issues with water coming down the hill right now, straight through their property and into the lake. Concerns being drainage, their septic, their wells, how that is going to affect all their property, the lake itself, the wildlife there is over 100 acres at the top of this hill, which will be severely affected. Mrs. Nippi stated that they are also truly concerned about the value. They talk about a shortage of housing of these types of units. Right now on Twin Bridge Road they just put in two duplex units and they are sitting there vacant since they completed them 60 days. She felt there is no shortage of these housing types and wasn't sure where the people are going to come from. They have just put a tremendous amount of money in the property, tripled the value, and this is going to be detrimental to her property and is not in favor of it.

Ron Nippi, 71 Daniels Road; he asked, procedurally they received an abutters notice for tonight, typically doesn't this go through Planning Board first and they would get more than just a letter saying they are looking for special exception that tells them more about what is happening? Chairman Esenwine responded that traditionally they would go to Planning Board first, but for this hearing there isn't more information available because the Planning Board handles the details.

Nate St. Clair, 57 Daniels Road, stated that they are really going to be accessing this property off of Daniels Road and not Twin Bridge Road and Daniels Road is a private road now. Are they going to upgrade Daniels Road to a Class V road? Chairman Esenwine responded that it is his understanding that the access off of Twin Bridge Road is part of that lot, which is more a planning board issue.

Daryn Turner, 73 Daniels Road, stated that he was shocked because he was told that this property was going to be developed as elderly housing, not apartments. His first question was, if he has a 200-acre lot can he build a private road and build a 200 unit building on that. The board responded, that there would have to be frontage on a Class V road in order to do that. Again, he has a concern and what are they going to do to deter people from flocking to the water? Is there going to be a second access to this property? The board responded, as far as this plan goes, no.

Rick Monohan, Twin Bridge Road, stated that why would the Town consider an exception that would be adding students to an already financially challenged school, which will have an impact on the Town. Another concern is that it is predominately single family homes in that area and an apartment complex is going to be a detriment to the property values in that area. Lastly, Daniels Lake is now a great pond so it falls under the jurisdiction of the Water Supply and Pollution Control Division, this whole plan would have to go through them as well. A lot of the items are for the Planning Board.

Pat Delzell, 47 Daniels Road, abutter stated that she is concerned with the safety and sanitation of things, the kids or people going down to the lake and who pays for the paving that will take place. The board responded that any cost would usually be paid for by the developer.

Ron Nippi stated that he would like to just make a comment that Twin Bridge Road and Route 114 will have to be considered because of adding to this increased busy roads.

Public at Large: Ella Daniels, stated that she was shocked when she got this abutters letter. She was mislead. Mr. Fitzgerald came to her about a year ago asking about elderly housing and she felt that would be a great thing for Weare, it wouldn't increase the children in the school system.

Rebuttal of Applicant: Ms. Hayes thanked everyone for their comments, they are duly noted and she then stated that she would like to continue this application to allow them to go to the Planning Board to have a successful conceptual hearing with them. Chairman Esenwine responded, that the board won't continue this because this is the plan you would be continuing to discuss and if changes are made at the Planning Board level then they would have to re-file. Mr. Siciliano asked, if they go through design and come up with a plan, what would be the detriment to approving a special exception for this residential use. The board felt that they couldn't tell them how they would vote on it because there are a lot of things that differ from plan to plan. The board mentioned the road issue and the need to have two accesses would be concerns of the board. Ms. Hayes then requested to have the application withdrawn. Being there were no further comments or questions, Chairman Esenwine closed this hearing at 11:18 PM.

III. CASE DECISIONS:

Tim Galvin removed himself from the board for the vote on the next case.

Case #4003 Neal Kurk
Administrative Appeal, Article 30-A, Section 3.1

Applicant alleges that an error was made on 10/16/03 by the Building Inspector to issuing a building permit to allow alterations to a house in the Mt. Dearborn Road Historic District Overlay.

Tax Map 408-052

25 Mt. Dearborn Road

Chairman Esenwine stated that the only thing that the applicant is asking is whether the code enforcement officer correctly interpreted the zoning correctly. The question being is does renovations to a building considered a development. The board discussed the definition, which talks about any manmade change made to improved or unimproved real estate. Leon Methot made a motion that CEO was incorrect in his interpretation in the definition of development and that a special exception was required for repairs and renovations according to Article 30-A.3.1.3, Chairman Esenwine seconded the motion. Vote: 3 in favor (Methot, Purington Esenwine).

Tim Galvin retained his seat back on board for rest of meetings.

Case #2903 David Eric Welch (Rehearing)

Special Exception, Article 24, Section 24.8

Applicant is seeking permission to allow off street parking within the front and side setbacks.

Tax Map 109-017

299 South Stark Highway

Tim Galvin stated that he has a lot of issues with this. Chairman Esenwine stated that as far as he was concerned there are several issues: 1) the survey plan that accompanied the request was not prepared by a State of NH licensed surveyor; 2) an appraisal performed on the abutters property provided information that this request would diminish the value of their property; 3) oral testimony from the Weare Police Chief indicating that this request would indeed create a safety problem with regard to vehicular traffic and 4) the letter from the State of NH Department of Transportation didn't give clear clarification or evidence that this new plan was submitted for their review, rather just a letter renewing the existing driveway permit. The issue of the original plan not getting a variance for the lot size is not appropriate; it would be considered a pre-existing lot of record. Leon Methot moved to uphold the previous denial of the special exception for the above reasons stated; Tim Galvin seconded the motion, unanimous vote in favor (Methot, Purington, Esenwine, Galvin).

Case #4203 William & Naomi Bolton

Special Exception, Article 28.7.1

Applicant is requesting permission to permit construction of a driveway and associated grading within an area that has been defined as a wetland.

Tax Map 412-226

42 Norris Road

The board went through the seven conditions. Condition #1: Chairman Esenwine moved to accept condition #1; Leon Methot seconded the motion, unanimous vote in favor (Methot, Purington, Esenwine, Galvin). Condition #2: June Purington moved to accept condition #2; Leon Methot seconded the motion, unanimous vote in favor (Methot, Purington, Esenwine, Galvin). Condition #3: Tim Galvin moved to accept condition #3; June Purington seconded the motion, unanimous vote in favor (Methot, Purington, Esenwine, Galvin). Condition #4: June Purington move to accept condition #4, Leon Methot seconded the motion, unanimous vote in favor (Methot, Purington, Esenwine, Galvin). Condition #5: Leon Methot moved to accept condition #5; June Purington

seconded the motion, unanimous vote in favor (Methot, Purington, Esenwine, Galvin). Condition #6: Leon Methot moved to accept condition #6; June Purington seconded the motion, unanimous vote in favor (Methot, Purington, Esenwine, Galvin). Leon Methot moved to approve Case #4203 with the condition that the State of NH Wetlands Permit is received; June Purington seconded the motion, unanimous vote in favor (Methot, Purington, Esenwine, Galvin).

Case #4303 Northlake Holdings (Owner: White Tail Realty, Inc.)
Variance, Articles 24.3 & 28.8
Applicant is requesting permission to continue the industrial use in the commercial zone and encroachment of up to 30 feet in the 50-foot wetlands buffer.
Tax Map 412-200 10 North Riverdale Road

The board went through the five points relating to article 24.3. Point #1: Leon Methot moved to accept point \$1, Chairman Esenwine seconded the motion, unanimous vote in favor (Methot, Purington, Esenwine, Galvin). Point #2: Chairman Esenwine moved to accept point #2, June Purington seconded the motion. Discussion: Chairman Esenwine stated that due to the fact that there has been an industrial use of the building since it was built, as long as there is no excessive increase in size, particularly when the things are the same. Naomi informed the board that this building is a 20,000 square foot building previously approved for use with cold rolled steel and as long as it was continued to be used as a sort of steel manufacturing it would be fine. The building does not have a sprinkler system in it. If the building had been sold and was used for something different, then depending on what went in there a sprinkler system would have to be added. Vote: Unanimous vote in favor (Methot, Purington, Esenwine, Galvin). Points #3a, #3b & #3c: Leon Methot moved to accept point's 3a, 3b & 3c, June Purington seconded the motion, unanimous vote in favor (Methot, Purington, Esenwine, Galvin). Point #4: June Purington moved to accept point #4; Tim Galvin seconded the motion, unanimous vote in favor (Methot, Purington, Esenwine, Galvin). Point #5: Tim Galvin moved to accept point #5; June Purington seconded the motion, unanimous vote in favor. Chairman Esenwine moved that the variance be granted for industrial use in the commercial zone be granted, amended with conditions 1) the hours of operation be 7 AM to 7 PM, Monday through Friday and 7 AM to 5 PM on Saturdays, 2) a drainage plan must be submitted to the Planning Board for approval to insure no discharge into the wetlands, 3) the loading dock is not to exceed 20' in width as shown on the plans submitted, 4) if change of ownership loading dock is to be removed, June Purington seconded the motion, unanimous vote in favor (Methot, Purington, Esenwine, Galvin).

Case #4403	Richard Head & Melinda S. Gehris Administrative Appeal, Articles 3.2, 27.3.9 & 4 Applicant alleges that an error was made on 10/09/03 by the Planning Board, by issuing a conditional approval for a 46-lot cluster development on Flanders Memorial Road. Tax Map 405-073	236 Flanders Memorial Road
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Chairman Esenwine pointed out that Mr. Head brings up some interesting points but they don't appear to be in this board's jurisdiction. Tim Galvin stated that in what he has heard and seen, he is not in agreement that the Planning Board made an error. The buffer zone seems to be in the spirit of the zoning ordinance. If there was a necessity or difference between zones, that would be different. It appears that the split of the 100' buffer doesn't need to be separate and the Planning Board's interpretation was correct. Chairman Esenwine stated that historically the 100-foot buffer has always

been considered part of the lot, but no buildings are allowed to be placed in that buffer zone. The buffer was to be a shield of the adjoining the properties instead of adding on an additional amount to the open space. These lots are the size they are to be able to have individual wells and septic. The lots could have been smaller with central wells and septic. In regard to the lot configuration, the board indicated that they heard nothing, specifically to the second half of the definition, regarding extenuating circumstances that would cause the Planning Board to not allow this. The board felt that the ruling of the Planning Board was an appropriate application. June Purington stated that she lives on Flanders Memorial Road. She can find nothing in the appeal to overrule the Planning Board. The Zephania Breed Brook runs through her property to Duck Pond. Chairman Esenwine stated that traffic appeared to be an issue, but he can't say that the Planning Board didn't take that into account. The problem Chairman Esenwine has is only having one access to all these homes. Leon Methot moved to uphold the Planning Board decision; Chairman Esenwine seconded the motion, unanimous vote in favor (Methot, Purington, Esenwine, Galvin).

IV. OTHER BUSINESS:

NOVEMBER 4, 2003 MINUTES: Chairman Esenwine moved to approve the September 9, 2003 and the November 4, 2003 minutes as amended, Tim Galvin seconded the motion. Vote: 3 in favor (Purington, Esenwine, Galvin) and 1 abstained (Methot), therefore the motion passes.

RESIGNATION OF MEMBER: Naomi informed the board that Harry Wetherbee submitted a letter of resignation due to a concern he has with a possible perception that he might have a conflict of interest because of his personal occupation. The board accepted Harry's resignation. Chairman Esenwine made a motion to recommend to the Board of Selectmen to have Tim Galvin moved from an alternate member to a full member in place of Harry Wetherbee, June Purington seconded the motion, all in favor.

V. ADJOURNMENT:

As there was no further business to come before the board, Leon Methot moved to adjourn at 12:30 AM, June Purington seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator